

BOARD OF ZONING APPEALS DIVISION III

January 21, 2025

Case Number: 2024DV3037 (Amended)
Property Address: 1625 Shelby Street (*approximate address*)
Location: Center Township, Council District #18
Petitioner: Jugaad LLC, by David Retherford
Current Zoning: C-3 (TOD)
Request: Variance of development standards of the Consolidated Zoning and Subdivision Ordinance to provide for the construction of a convenience store with a front building line width ratio of 10.64 (80 percent required) and deficient transparency along Shelby Street (40 percent required), and with deficient landscaping.
Current Land Use: Vacant Commercial
Staff Recommendations: Staff recommends **denial** of this petition.
Staff Reviewer: Michael Weigel, Senior Planner

PETITION HISTORY

This petition was continued from the December 17th, 2024 hearing date by petitioner request to allow for additional discussion with staff and relevant neighborhood stakeholders. In the intervening period, updated plans were provided that incorporated the following amendments: (a) closure of the southernmost curb cut and addition of new curb island along Shelby, (b) an alternate location for placement of a new sign that would comply with current standards, (c) placement of a new window on the western elevation, and (d) addition of small landscaped areas along Pleasant Run and at the southwest corner of the property. These new plans and updated Findings of Fact documents have been added to the report, which otherwise was written to reflect the initial site plan submitted. Staff is appreciative of the changes made because of these discussions, but core objections related to how little the proposed layout comports with relevant Transit-Oriented Development standards remain. Therefore, staff continues to recommend **denial** of the petition.

STAFF RECOMMENDATION

Staff recommends **denial** of this petition.

PETITION OVERVIEW

- 1625 Shelby Street is a triangular lot which has historically contained a fueling station use that was initially constructed between 1972 and 1978. The property contained two fuel canopies, three accessory structures, a pole sign, and four existing curb cuts. In late 2023 or early 2024, the fueling station use ceased operations and the accessory buildings were demolished without issuance of a wrecking permit (which resulted in the violation case VIO24-001821 being opened); fuel pumps and two canopies remain at the site. Surrounding land uses and improvements include the I-65 interstate to the east, the Pleasant Run Creek and greenway to the south, a fueling station and retail uses to the southwest, and a thrift store use to the northwest. The site is located near the Fountain Square neighborhood to the north.
- A Red Line BRT bus stop exists at the intersection of Shelby Street and Pleasant Run Parkway SDR to the south of the property, and there is approximately 485 feet separating the edge of the transit station from the edge of this parcel. Given this proximity, TOD restrictions on uses and development standards would apply. The addition of any new or relocated fuel pumps beyond the three currently existing underneath the remaining canopies would require a variance of use for legal operation. However, since (a) the pumps and canopies predate ordinance rules disallowing fueling station uses within C-3 zoning and the TOD overlay, and (b) the zoning ordinance allows for five years of vacancy before a nonconforming use would be considered discontinued (740-603), no use variance would be required for the addition of a new convenience store structure.
- However, the proposed convenience store shown on submitted plans would require multiple variances of development standards related to the TOD overlay guidelines introduced in 2021 to allow for pedestrian-friendly development along activated streetscapes. Required variances relate to: (a) the width of the building as a ratio of the width of the Shelby frontage (80% required and only 10.64% proposed), (b) the percentage of transparent materials comprising the western building façade closest to the Shelby frontage (40% required and 0% proposed), (c) the required setback for parking areas from the Pleasant Run frontage (25 feet required and 17 feet proposed), and (d) deficient landscaping at the site (both width of landscape strip along Shelby and required screening of parking areas from rights-of-way per 744-702.D.3.d of the Ordinance).
- Review of the Improvement Location Permit application for this project was initially conducted earlier this year and noted similar dimensional standards issues. That reviewer also noted issues with light-level standards exceeding maximum allowable limits. Lighting details were not provided for DMD review, and any outstanding issues related to lighting would need to be addressed separately should the petition be approved. Additionally, the number of curb cuts and driveway widths at the site would not meet current standards and, regardless of approved land use, staff would be generally supportive of efforts to close off some of those access points.
- This property is zoned C-3 (Neighborhood Commercial District) to allow for the development of an extensive range of retail sales and personal/professional services with accessibility for all modes of travel being provided and maintained. This zoning district previously allowed for the

placement of fueling stations by-right but this is no longer a permitted use. The Pattern Book recommends this site to the Village Mixed-Use typology to allow for neighborhood gathering places with a wide range of small businesses, housing types, and public facilities. Development in this typology should be compact and walkable with parking at the rear of buildings, entrances and large windows facing streetways, and with pedestrian-scale amenities such as landscaping contributing to the walkable environment. Mixed-use structures are preferred, and automotive uses (such as gas stations and auto repair) are not a contemplated land use. Similarly, the Red Line TOD Plan envisions mixed-use commercial nodes placed near BRT stops and discourages both automotive uses and parking within surface lots near stations.

- Findings of Fact submitted by the applicant indicate that the primary hardships preventing them from full ordinance compliance are the unusual parcel shape and the existing fuel canopies limiting options for placement of buildings on the site. Staff would note that the legally non-conforming pumps and canopies are not required to be placed at the site, and that their existence would not constitute a site-specific practical difficulty. Additionally, their removal could facilitate development of a convenience store that conforms much more closely with TOD requirements for building placement/width and parking similar to the recent pedestrian-oriented development to the northwest of the site (see Photo 6 within Exhibits).
- In addition to the close proximity between this site and the Pleasant Run Red Line stop, staff would note that this property sits between the Pleasant Run Greenway to the south and the Fountain Square station to the north (which has direct access to the Cultural Trail and a Pacers Bikeshare kiosk) and is bordered by a protected bike lane to the west. Given the high visibility of this area and proximity to several multi-modal travel options, staff contends that development and land uses should maximize the potential offered by the TOD overlay by meeting ordinance and Plan guidance as closely as possible. The proposed use of a convenience store is not incongruous with this vision, but the proposed building layout offers zero pedestrian activation along the Shelby frontage through a building width that is around one-eighth of ordinance requirements and a building façade with no windows or architectural features.
- Since the presence of multiple fueling canopies is neither required by the property's primary and secondary zonings nor a prerequisite for the successful operation of a convenience store, staff does not feel that their existence constitutes a site-specific practical difficulty. Their presence (and related fueling station use) would not be permitted by current ordinance standards and constitutes a direct impediment to development of the property in a manner compliant with ordinance and Plan guidance that envisions a vibrant and pedestrian-friendly streetscape. Removal of one or more of the canopies could allow for placement of a building that comprises a much larger portion of the Shelby frontage with additional windows and pedestrian features (and fewer extraneous curb cuts). Additionally, it could allow for reconfiguration of the proposed parking area further from property lines and for the installation of the required landscaping strip along Shelby. Staff feels that even accounting for the irregular lot shape, the proposed layout deviates substantially from both compliance and intent of relevant guidelines and recommends denial of the variances.



GENERAL INFORMATION

Existing Zoning	C-3 (TOD)		
Existing Land Use	Vacant Commercial		
Comprehensive Plan	Village Mixed-Use		
Surrounding Context	<u>Zoning</u>	Surrounding Context	
	North:	C-3	North: Interstate
	South:	PK-1	South: Pleasant Run Creek
	East:	C-3	East: Interstate
	West:	C-3 / I-3	West: Commercial
Thoroughfare Plan			
Shelby Street	Primary Arterial	62-foot existing right-of-way and 56-foot proposed right-of-way	
Pleasant Run Pkwy NDR	Primary Collector	90-foot existing right-of-way and 56-foot proposed right-of-way	
Context Area	Compact		
Floodway / Floodway Fringe	No		
Overlay	Yes		
Wellfield Protection Area	No		
Site Plan	11/21/2024		
Site Plan (Amended)	01/10/2025		
Elevations	11/21/2024		
Elevations (Amended)	12/23/2024		
Landscape Plan	11/21/2024		
Findings of Fact	11/21/2024		
Findings of Fact (Amended)	01/10/2025		

COMPREHENSIVE PLAN ANALYSIS

Comprehensive Plan

- Marion County Land Use Plan Pattern Book
- Red Line Transit-Oriented Development Strategic Plan

Pattern Book / Land Use Plan

- The Marion County Land Use Plan Pattern Book recommends this site to the Village Mixed-Use typology to allow for neighborhood gathering places (either in historically small neighborhood centers or newly created ones) with a wide range of small businesses, housing types, and public facilities. Development in this typology should be compact and walkable with parking at the rear of buildings, entrances and large windows facing streetways, and with pedestrian-scale amenities such as landscaping contributing to the walkable environment. Mixed-use structures are preferred, and automotive uses (such as gas stations and auto repair) are not a contemplated land use.

Red Line / Blue Line / Purple Line TOD Strategic Plan

- The Red Line Transit-Oriented Development Strategic Plan recommends this site to the Walkable Neighborhood TOD typology given its proximity to the Pleasant Run Red Line stop. The desired land-use mix for these areas is primary residential but with a commercial node of mixed-use development near transit stops. Off-street parking within surface lots and “car-only uses” are discouraged.

Neighborhood / Area Specific Plan

- Not Applicable to the Site.

Infill Housing Guidelines

- Not Applicable to the Site.

Indy Moves

(Thoroughfare Plan, Pedestrian Plan, Bicycle Master Plan, Greenways Master Plan)

- Not Applicable to the Site.

ZONING HISTORY

ZONING HISTORY – SITE

N/A

ZONING HISTORY – VICINITY

2018ZON129 ; 1618 Shelby Street (west of site), Rezoning of 0.55 acre from the I-3 district to the C-3 classification, **approved**.

2001VAR830 ; 1638 Shelby Street (southwest of site), variance of development standards of the Commercial Zoning Ordinance to legally establish eleven off-street parking spaces, for the storage of trucks and trailers, located within the side transitional yard (off-street parking not permitted within the side transitional yard), **approved**.

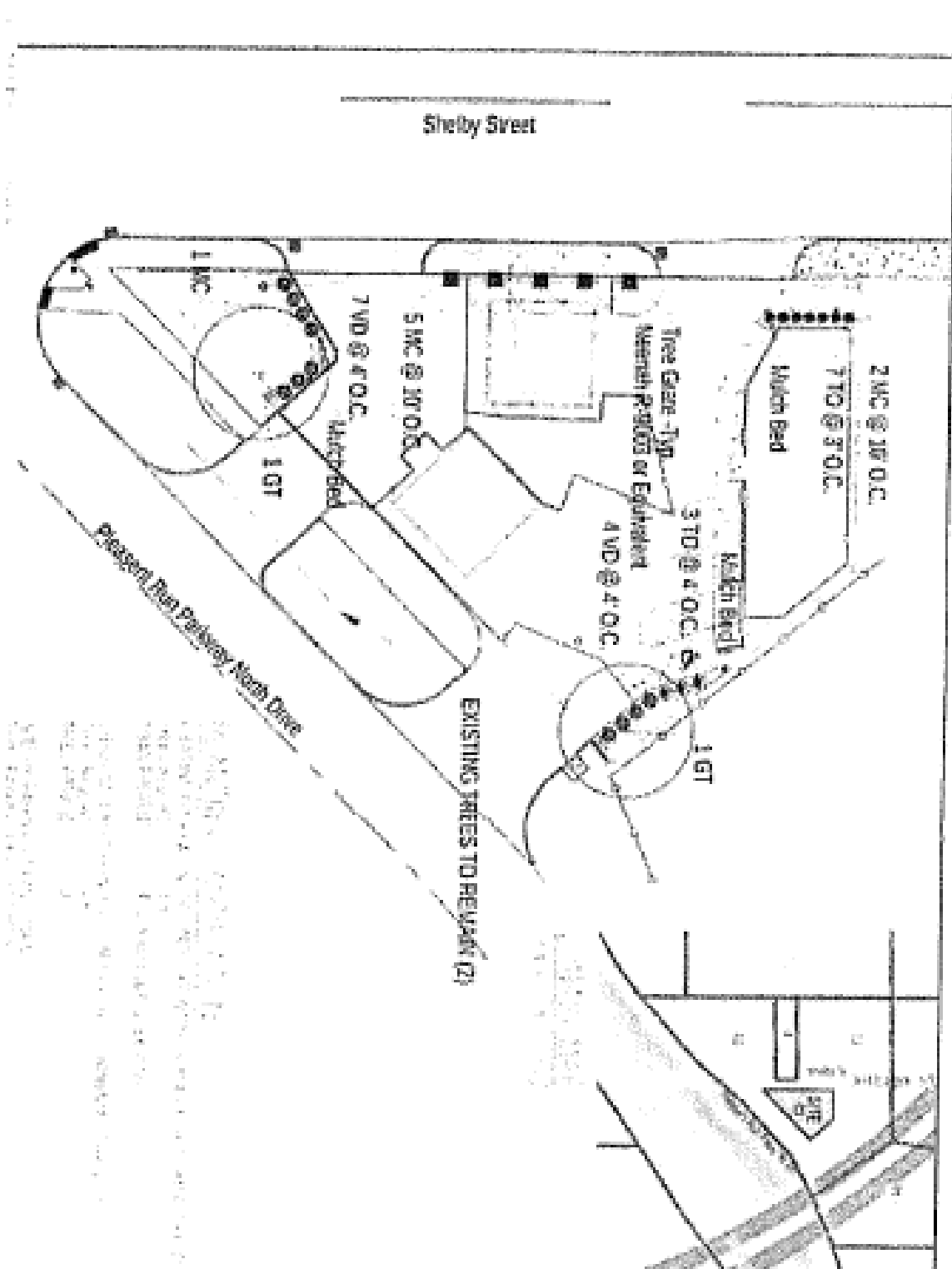
2001ZON830 SW ; 1638 Shelby Street (southwest of site), rezoning of 0.566 acres from the I-3-U district to the C-3 classification, **approved**.

EXHIBITS

2024DV3037 ; Aerial Map



2024DV3037 ; Landscape Plan (preliminary)



2024DV3037 ; Findings of Fact (Transparency)

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because: Approving the exterior design of the building with the 17' foot long west facing wall only containing 17.5% transparency instead of the required 40% is not likely to create such injury. This wall does not contain a public entrance. The desired visibility into the building is provided in a reasonable fashion by the 3' X 5" window in the south portion of that wall, which allows direct view of the cash register location. In addition, the true front facing wall of the building contains 58% transparency, and the angled wall between the front wall and the west wall contains 42% transparency. In addition, if the three walls were measured as one no variance would be required as the overall transparency would exceed 40%. To resolve any potential security concerns the cash register location is also located within a transparent bullet proof enclosure for safety.
2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because: The subject property has been developed and utilized continually as a gasoline service station with a small associated store and public restrooms for at least four decades, and while the gas station use is integral to the success of the convenience store operation, the gas station is legally permitted and established and is not being expanded. The site sits at the intersection of Shelby Street and the sharply angled Pleasant Run North Drive, so it is a very small triangular parcel. The two rear yards of the site abut I-65 to the North and northeast. Across Pleasant Run to the East and Southeast is the heavily wooded Greenways corridor and then South drive, before any residential lots even exist. Across Shelby Street to the West are three properties. Two are zoned C-3. The north parcel contains a commercial building owned by the Archdiocese, and the south parcel contains Nelson's Marathon gas station. The middle parcel appears to contain a residential rental. Installing a new attractive masonry building with canopies, and adding a new landscaping area directly west of the west facing wall with the 17.5 % transparency, when combined with the elimination of the former public restrooms that had created a well-known homeless population immediately to the North which is blamed for a history of vandalism and police calls, is actually likely to positively impact the use or value of the adjacent properties if the request is approved.
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because: Although Shelby Street is the front yard of the site per the ordinance, the front of this building actually faces the intersection, so the 17' long west wall is a side wall. This wall does not contain a public entrance, and the only area inside the store where the full height coolers can practically be located is along this same west wall. Since the original petition was filed, the Petitioner has added a window in this west wall which eliminates three of the originally designed coolers, and there is no practical way to replace any additional coolers if the full 40% is required for this wall.

2024DV3037 ; Findings of Fact (Landscaping)

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because: Permitting the landscaping required along the approximately 20' of the frontage along Shelby Street which abuts the short term parking space used when refueling at the single pump station along that frontage, does not present any risk of such injury in this case where the Petitioner is adding significant landscaping to the site at each end of the Shelby Street frontage per the Site Plan; and it also willing to close the existing southernmost entrance onto Shelby Street, and to solve a long-time existing risk by installing a new curb separating the pedestrian traffic on the existing sidewalk along Shelby Street from the internal vehicular traffic on the site.
2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because: The site sits at the intersection of Shelby Street and the sharply angled Pleasant Run North Drive, so it is a very small triangular parcel. The two rear yards of the site abut I-65 to the North and northeast. Across Pleasant Run to the East and Southeast is the heavily wooded Greenways corridor and then South drive, before any residential lots exist. Across Shelby Street to the West are three properties. Two are zoned C-3. The north parcel contains a commercial building owned by the Archdioces, and the south parcel contains Nelson's Marathon gas station. The middle parcel appears to contain a residential rental. The subject property has been utilized in the past as a gasoline service station with a very small associated C-store and also public restrooms, for at least four decades. If the variance is approved, the legally permitted gas station use would be refreshed and modernized, a new and attractive C-store built, and the entire site landscaped along with several significant improvements to the safety and appearance of the site. Permitting these upgrades to be made by approving this variance is preferable to denying it based on the minor variance being requested which abuts only the side of one parking space, as opposed to the front or back of said space.
3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because: This is a very small site, triangular in shape. In addition to parking space adjacent to the pump for a vehicle that is being refueled, a traffic lane to pass the parked vehicle is required for public safety and emergency access. This access is especially important on the Shelby Street side due to the impact of the agreement by the Petitioner to close the southernmost entrance onto Shelby Street. The proposed new curb will be installed on the existing right of way line, which is also the east edge of the existing sidewalk. This presents a practical difficulty in that there is no room between the right of way line/existing sidewalk and the access around this fuel island for the typical landscape island along this short length of frontage. The legally existing pump and fuel island cannot practically be relocated due to the other improvements on the site, and it is not required to be removed. A site specific practical difficulty exists here; and the solution proposed by the Petitioner to landscape at the intersection and west of the building as shown on Site Plan, and also to add additional landscaping within the new island/areas along Pleasant is a satisfactory solution in this unique situation.

2024DV3037 ; Findings of Fact (Building Width)

1. The grant will not be injurious to the public health, safety, morals, and general welfare of the community because: Locating the proposed new building as far off the intersection as possible, and also aligning it so the attractive front of the building actually faces the intersection as proposed by the Petitioner, is a better option than waiting for an unknown future owner who would possibly be willing to remove the existing pumps, tanks and gas station improvements and completely redevelop the site with a small office building facing Shelby Street that would most likely still require multiple variances due to the small size and shape of the subject site. The Petitioner's proposal includes locating the building and the associated parking and related pedestrian store activity as far from the intersection as possible, which is likely safer than a location closer to the intersection, or even with the back of the building exposed to Pleasant Run. The Petitioner is willing to close the existing southernmost entrance onto Shelby Street, which would not be required by a different proposed use that did not require a rezoning. The Petitioner is also willing to solve a long-time existing risk by installing a new curb separating the pedestrian traffic on the existing sidewalk along Shelby Street from the internal vehicular traffic on the site. The Petitioner is willing and ready to invest hundreds of thousands of dollars in the proposed redevelopment of this decayed site, one which has a history under prior owners of being a haven for homeless people and associated crime. For all these reasons it is likely that the approval of this request would benefit public safety, morals and general welfare more than denying it and then waiting on an unknown future user and their plans.

2. The use or value of the area adjacent to the property included in the variance will not be affected in a substantially adverse manner because: The site sits at the intersection of Shelby Street and the sharply angled Pleasant Run North Drive, so it is a very small triangular parcel. The two rear yards of the site about I-65 to the North and northeast. Across Pleasant Run to the East and Southeast is the heavily wooded Greenways corridor and then South drive, before any residential lots exist. Across Shelby Street to the West are three properties. Two are zoned C-3. The north parcel contains a commercial building owned by the Archdioces, and the south parcel contains Nelson's Marathon gas station. The middle parcel appears to contain a residential rental. The subject property has been utilized in the past as a gasoline service station with a very small associated C-store and also public restrooms, for at least four decades. If the variance is approved, the legally permitted gas station use would be refreshed and modernized, a new and attractive C-store built, and the entire site landscaped along with several significant improvements to the safety and appearance of the site. Denying this request based on the proposed orientation of the building likely just results in it staying vacant and an eyesore for the foreseeable future, and the current opportunity to actually have a positive impact on the adjacent properties and this area would be lost.

3. The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property because: Even though it is a sharp cornered lot, the ordinance requires a new building to face Shelby Street, and also for the width of that building to cover at least 60% of the length of that frontage. The site is not likely large enough to accommodate a flatiron style building with the associated parking and accesses, setbacks, landscaping, etc. Any typical rectangular building would likely require similar variances to be granted due to the practical difficulty that complying with the TCO ordinance presents on this particular site. By orienting the building towards the intersection, thereby providing views of the front of the building from the intersection also from both of the abutting streets, the Petitioner presents a reasonable solution to the practical difficulty this site presents. This proposal is likely to get this vacant site cleaned up and back on the tax rolls soon, and it makes practical sense here to approve the building as oriented as it actually does cover more than the required 60% of the lot width if that measurement is simply taken at the most practical location on this triangular site, which is across the back portion of the lot and immediately in front of the proposed building. It is also likely that the costs and delays which would result from any effort to remove the existing tanks, pumps and lines in compliance with the regulations of IDEM and the EPA are a significant practical difficulty which was not self-imposed, which would make it difficult at best to justify changing the use to anything different than a remodel of the existing gas station use on this unique site.

2024DV3037 ; Photographs



Photo 1: Subject Site from Southwest



Photo 2: Subject Site from Pleasant Run Pkwy NDR

2024DV3037 ; Photographs (continued)



Photo 3: Subject Site from Shelby Street



Photo 4: Subject Site from West (taken August 2023)

2024DV3037 ; Photographs (continued)



Photo 5: Adjacent Property to the Southwest



Photo 6: Adjacent Property & Bike Plane to the Northwest (September 2024)

2024DV3037 ; Photographs (continued)



Photo 7: Existing Curb Cuts along Shelby Street



Photo 8: Existing Curb Cuts along Pleasant Run Pkwy NDR